

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.Rev.Pet.No. 384 of 2000()

CRA.50/1998 of SESSIONS COURT, KASARAGOD
CC.270/1996 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
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REVN. PETITIONER: APPELLANT/ACCUSED

D.SANKAPPA ALVA, S/O.KORAGAPPA ALVA
RESIDING AT DERAMBALA, HOSAMANE HOUSE
KULLOOR VILLAGE AND POST
VIA. MANJESHWAR.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENTS: COMPLAINANT & STATE

1. F.J.RODRIGUES, S/O.JOSEPH RODRIGUES
FORT ROAD, KASARAGOD.
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CRRPNO.384/2000

ORDER ON CRL.M.P.NO.2227/2000 IN CRL.R.P.NO.384/2000

DISMISSED

26.10.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.384 of 2000

Dated this the 26th day of October, 2007

O R D E R

The revision petitioner who is the accused stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.5,55,000/- and in default, to undergo simple imprisonment for three months.

2. The case of the complainant is that the accused had borrowed amounts from him and towards discharge of the liability issued the impugned cheque dated 6.4.1996 for a sum of Rs.4,70,000/- and when it was presented for collection the same was dishonoured for want of funds in the account of the accused. The lawyer notice issued was received but there was no reply nor was any amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P6.

4. PW1 has testified as to the execution of the cheque and dishonour for want of funds in the account of the accused.

PW2, the bank manager, has proved Ext. P6 ledger extract of the account of the accused to establish the fact that the cheque was returned for want of funds in the account of the accused. PW1 has proved Exts. P1 to P5, the cheque, memo received, intimation, copy of the lawyer notice and postal acknowledgment. The defence case is that the accused had sold his son's jeep to the complainant and the signed blank cheque leaves kept in the jeep was taken by the complainant and misused. It is also suggested in the cross examination that the complainant was a partner in the Abkari business of the accused. PW1 has denied the same. The alleged transaction of the sale of the jeep was also denied by PW1. No rebuttal evidence has been adduced to dislodge the statutory presumption. He has also stated in the cross examination that the amount was given to the accused by taking a loan from the account of his brother from Canara Bank, Bangalore branch. It is the contention that the above documents were not produced. I find that the accused has no case that the complainant who is engaged in the business of vessels as brought out in the cross examination that the accused is a person who is not having means to lend the amount. In the

circumstances, I find no reason to deviate from the concurrent findings of the court below. The conviction is confirmed.

5. Considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.5,55,000/- to the complainant and in default, to undergo simple imprisonment for three months. The revision petitioner is granted four months' time to remit the amount of compensation. He shall appear before the Chief Judicial Magistrate Court, Kasaragod on 26.2.2008 to receive the sentence.

The criminal revision petition is disposed of accordingly.

**K.R.UDAYABHANU,
JUDGE**

csl